2009

# Randy Frank Grgich v. Sharon Grgich : Brief of Appellant

Utah Court of Appeals


Gary Buhler; attorney for apellee.
Scott A. Broadhead; attorney for appellant.

IN THE UTAH COURT OF APPEALS

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| RANDY FRANK GRGICH,<br>Petitioner/Appellant,<br><br>v.<br><br>SHARON GRGICH,<br>Respondent/Appellee, | ) | Case No. 20091002-CA |
| BRENDA KATHLEEN GOWANS,<br>RODNEY GRGICH JR., AND<br>BRITTNEY KAYE GRGICH,<br>Interveners/Appellants. | ) | |

APPEAL FROM A FINAL DECREE AND JUDGMENT
HONORABLE STEPHEN L. HENRIOD
THIRD JUDICIAL DISTRICT COURT IN AND FOR
TOOELE COUNTY, STATE OF UTAH

# BRIEF OF APPELLANTS

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## JURISDICTION

Jurisdiction over this matter is proper pursuant to Utah Code Ann. § 78A-4-103(2)(h), as amended.

## ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in ruling that the statute of limitations did not apply to Respondent/Appellee's quiet title claim.

STANDARD OF REVIEW: The standard of review when reviewing a lower court's decision regarding the application of a statute of limitations, which is a question of law, is for correctness. Russell Packard Dev., Inc. v. Carson, 108 P.3d 741 (Utah).

PRESERVATION IN RECORD BELOW: This issue was the subject a motion to dismiss (R. 270-273) and argued at trial (R. 392).

2. Whether the trial court erred in ruling by clear and convincing evidence that the 1990 quitclaim deed was invalid.

STANDARD OF REVIEW: We will "assess the quality and quantity of the evidence to determine whether it 'clearly preponderates against' the trial court's [determination] that the appropriate standard of proof has been satisfied." Nikols v. Goodman & Chesnoff, 206 P.3d 295 (Utah).

PRESERVATION IN RECORD BELOW: This issue was the subject of much of the trial (R. 390-392).

3. Whether the trial court erred in awarding property which was owned by third parties to the Petitioner/Appellant and Respondent/Appellee.

STANDARD OF REVIEW: The standard of review when reviewing a lower court's decision regarding personal jurisdiction, which is a question of law, is for correctness. Jackson Construction Company, Inc. v. Marrs, 100 P.3d 1211 (Utah).

PRESERVATION IN RECORD BELOW: This issue was the subject of much of the trial (R. 279-286, 295-306, 390-392).

4. Whether the trial erred by granting Petitioner/Appellant an inequitable share of the marital estate.

STANDARD OF REVIEW: "Trial courts have considerable discretion in determining ... property distribution in divorce cases, and [their decisions] will be upheld on appeal unless a clear and prejudicial abuse of discretion is demonstrated. " Stonehocker v. Stonehocker, 176 P.3d 476 (Utah App.).

PRESERVATION IN RECORD BELOW: This issue was the subject of much of the trial (R. 279-286, 295-306, 390-392).

5. Whether the trial judge err in awarding attorney's fees against the Appellants.

STANDARD OF REVIEW: Whether the action or defense was without merit is a question of law, which is reviewed for correctness. Pennington v. Allstate Insurance Co., 973 P.2d 932, 939 n. 3 (Utah 1998). A finding of bad faith is a question of fact regarding

subjective intent, which is reviewed under the "clearly erroneous" standard. *Id.* Whether the trial court's findings of fact in support of an award of fees are sufficient is a question of law reviewed for correctness. Valcarce v. Fitzgerald, 961 P.2d 305, 314 (Utah 1998).

PRESERVATION IN THE RECORD BELOW: This issue was argued at trial (R. 279-286, 295-306, 390-392).

## STATUTES, ORDINANCES, AND RULES

Utah Code Ann. § 78B-5-825.

> In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith[.]

Utah Code Ann. § 57-1-13.

> A quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described and all rights, privileges, and appurtenances thereunto belonging, at the date of the conveyance.

## STATEMENT OF THE CASE

On November 14, 2006, Petitioner/Appellant, Rodney Frank Grgich, filed a complaint for divorce.

On December 4, 2006, Respondent/Appellee, Sharon Grgich, filed an answer which denied the Petitioner's allegations regarding the distribution of the property and debts and stated that she "affirmatively states that she is entitled to receive ½ of the value of the marital estate to include the real property she has lived on for the last 19 years and the herd of cattle she has helped to feed over the same period of time." The real property

referred to is 26.8 acres of farm land. On a corner of the farm sits a trailer which the parties resided in during part of their marriage. This land also has water rights associated with the land.

On November 15, 2007, the first trial was held in this matter. At this time Respondent/Appellee argued that she was entitled to ½ of the entire farm and water rights, not just Petitioner/Appellant's share. This is the first time that this argument had been made to the court orally or in writing. Respondent/Appellee was aware of the deeds, but had never joined the other three titled owners of the property to this case, filed a complaint or other pleadings against them, or gave them any notice that their property interest was in jeopardy.

On January 7, 2008, Judge Kouris issued his memorandum of decision. As part of the decision, he ruled that Respondent did acquire a marital interest in the farm and awarded a ½ interest to Respondent/Appellee of the entire farm and water rights, not just Petitioner/Appellant's interest.

Petitioner/Appellant filed an objection to the order and a hearing was held on March 10, 2008. Petitioner/Appellant's objection was based upon some factual mistakes and the order regarding the farm. At the hearing Petitioner/Appellant's attorney argued the order deprived the other three titled owners of their property interest without due process of law. He reminded the court that the other three titled owners were not a party to this action and were not given the legal right to defend their property rights.

On March 31, 2008, Judge Kouris issued his ruling correcting the factual mistakes, but did not reverse his order regarding the division of the farm. The order made no reference to the argument made concerning the due process rights of the other three titled owners.

On April 18, 2008, Respondent/Appellee's attorney submitted the Amended Findings of Fact and Conclusions of Law and Amended Decree to the Court. On April 23, 2008, Judge Kouris signed the Amended Findings of Fact and Conclusions of Law and Amended Decree to the Court.

On June 17, 2008, Interveners/Appellants filed a motion to intervene. They, along with Petitioner/Appellant, filed a motion to set aside the decree. On September 2, 2008, Judge Henriod granted the motion to intervene and the motion to set aside the decree after argument by the parties.

The trial court held a new trial beginning on June 19, 2009.

## STATEMENT OF FACTS

Petitioner/Appellant and Respondent/Appellee were married in 1967 in Elko, Nevada. They resided on the family farm, which was owned by Petitioner/Appellant's father, in a trailer from the time of their marriage until approximately 1977. They resided in Tooele County in various locations thereafter until there moved back to the farm in approximately 1993. Petitioner/Appellant and Respondent/Appellee resided in various

locations, losing these residences through eviction and foreclosure. Through the years the trailer deteriorated to the point of being virtually uninhabitable.

In 2006, Petitioner/Appellant suffered a massive heart attack and was hospitalized for some time. Through the assistance of their children, Petitioner/Appellant and Respondent/Appellee obtained a new and substantially better residence by renting a modular home in Tooele. Petitioner/Appellant moved into the new residence following his hospitalization. However, Respondent/Appellee refused to move into the new residence for some reason which remains unclear. The marital relationship began to deteriorate rapidly. Respondent/Appellee assaulted the Petitioner/Appellant at the family farm and Petitioner/Appellant obtained a protective order against her. Respondent/Appellee moved in with one of her children. At the protective order hearing, Respondent/Appellee requested and was granted the right to reside in the trailer on the farm, so long as she did contact Petitioner/Appellant while he was operating the farm.

The family farm referred to is a 26.8 acres of farm land which on a corner of the farm sits a trailer. The parties lived in this trailer during part of their marriage. This land also has water rights associated with the land. The prior owner of the farm was Petitioner/Appellant's father. After the death of Petitioner's father, Petitioner/Appellant received title to the farm by a personal representatives deed on January 24, 1990. The next day, Petitioner/Appellant signed and recorded a quit-claim deed transferring his interest in the property to himself and three of his children, Brenda Kathleen Grgich,

Rodney Grgich Jr., and Brittney Kaye Grgich (Interveners). Petitioner/Appellant also inherited from his father the water rights and numerous items of farm equipment, which he still possesses. Petitioner/Appellant similarly transferred his interest in the water rights to Interveners/Appellants in 1990.

Title of the property remained the unaltered until August 2, 2006. Petitioner/Appellant created the Manda Heritage Irrevocable Trust and transferred his interest in the property to the trust. Just prior to trial was the first time that Petitioner/Appellant learned that the this deed was never recorded. Petitioner/Appellant received this deed from his estate planning attorney a few days prior to trial with the explanation that he has just received it back from the Tooele County Recorder's Office because the section regarding water rights was defective.

Brenda Kathleen Grgich, Rodney Grgich Jr., and Brittney Kaye Grgich (Interveners) have been actively involved with the farm over years including residing on the farm, working on the farm, acquiring and paying the mortgage on the farm, and paying the taxes.

## SUMMARY OF ARGUMENT

The trial court relied on Nolan v. Hoopiiaina ( In re Hoopiiaiana Trust), 144 P.3d 1129 (Utah 2006) in determining that the statute of limitations did not apply in this case. However, Appellee's claim for an interest in the property is not a quiet title claim, nor did Appellee ever make a quiet title claim. The quiet title claim is a creation of the trial court

judge. It is clear from the Verified Answer and the Amended Answer and Complaint against the Interveners that Appellee made a claim for a marital interest in the property and to invalidate the January 25, 1990 deed. Therefore, the claim to invalidate he 1990 deed is subject to the statute of limitations and, therefore, barred by that statute of limitation.

Even if the Court determines that the a quiet title claim exists, the underlying claim or legal issue is to invalidate the January 25, 1990 deed. "[T]he party is entitled to have title quieted only if the court first finds in his or her favor on another legal issue, then the same statute of limitations that applies to that legal issue will also apply to the quiet title claim." In re Hoopiiaiana Trust, 144 P.3d 1129, ¶ 27 (Utah 2006). The claim to invalidate the 1990 quitclaim deed is subject to the statute of limitations and, therefore, barred.

The trial court never addressed the statute of limitation issue with respect to the water rights. The trial court treated the water rights the same as the farm property. The quiet title statute of limitations does not apply to the water rights. Any claim for the water rights should be barred by the statute of limitations. Therefore, Appellee should be entitled to a marital share of Petitioner/Appellant's interest in the water rights.

There is no dispute that the 1990 quit claim deed was validly executed and recorded. The dispute is whether Petitioner/Appellant delivered the deed to Intervenors/Appellants with the present intent to transfer. "A conveyance is valid upon

delivery of a deed with present intent to transfer." Winegar v. Froerer Corp., 813 P.2d 104,110 (Utah 1991). There was considerable evidence taken at trial which tried to ascertain Petitioner/Appellant's intent. Petitioner/Appellant was a parent of the Interveners/Appellants, who were minors, as well as an owner of the property. As an owner, Petitioner/Appellant would have paid mortgage payment, possessed the property, paid taxes, etc. Petitioner/Appellant's conduct was consistent both with his ownership and his role as parent to the Intervener/Appellants. Appellee failed to show by clear and convincing evidence that the 1990 quitclaim deed was not delivered. Therefore, the 1990 quitclaim was valid and the trial court ruling should be reversed.

The trial court awarded water rights of third parties to the Petitioner/Appellant and Respondent/Appellee (R. 305, 390-392). These third parties have filed a motion to intervene and a motion for relief of judgment (R. 319-355). Because these third parties were not a party to the action, the court had no jurisdiction to determine their rights to the property. The order of the trial court in regards to the water rights should be reversed.

Although the trial court ordered that all of the other marital property be sold and distributed equally, the trial court awarded the GMC pickup to Respondent and did not divide the marital debts equally. Upon sale of property, all marital debts acquired prior to separation be paid by the proceeds and then the remaining balance be divided equally.

In its minute entry of September 3, 2009, the trial court states that "Respondent is awarded her attorney's fees because of the conduct of the petitioner in attempting to

prevent her from receiving a fair share of marital assets" (R. 285). Based upon this finding, one must conclude that the trial court believed that Appellant's case was without merit or asserted in good faith pursuant to Utah Code Ann. § 78B-27-825.

There is more than sufficient evidence in the record to support that the Appellants claims have merit and were asserted in good faith. The findings made by the trial court in support of the judgment of attorney fees was insufficient. The finding was a conclusion without any assertions of fact. The finding does not even state which parties are subject to the order. The trial courts' findings and order in support the award of attorney fees and the order should be reversed.

## ARGUMENT

### I. THE TRIAL COURT ERRED IN RULING THAT THE STATUTE OF LIMITATIONS DID NOT APPLY TO RESPONDENT/APPELLEE'S QUIET TITLE CLAIM.

#### A. APPELLEE DID NOT ASSERT A QUIET TITLE CLAIM.

The trial court relied on Nolan v. Hoopiiaina ( In re Hoopiiaiana Trust), 144 P.3d 1129 (Utah 2006) in determining that the statute of limitations did not apply in this case. However, Appellee's claim for an interest in the property is not a quiet title claim, nor did Appellee ever make a quiet title claim. In paragraph 2 of Appellee's Verified Answer she "affirmatively states that she is entitled to receive ½ of the value of the marital estate to include the real property she has lived on for the last 19 years and the herd of cattle she

has helped to feed over the same period of time" (R. 11). In paragraph 2 of Appellee's Amended Answer and Complaint against the Interveners, she makes the same statement and seeks to invalidate the January 25, 1990 deed as an invalid or fraudulent transfer (R. 263-264). The quiet title claim was a creation of the trial court judge.

"A true quiet title action is a suit brought 'to quiet an *existing* title against an adverse or hostile claim of another,' and 'the effect of a decree quieting title is not to *vest* title but rather is to *perfect* an existing title as against other claimants.' *Dep't of Social Servs. v. Santiago,* 590 P.2d 335, 337-38 (Utah 1979). Thus, the question becomes whether a claim is a true quiet title action or whether the claimant really seeks other relief; if the claim is a true quiet title action, it is not subject to a statute of limitations." In re Hoopiiaiana Trust, 144 P.3d 1129, ¶ 26 (Utah 2006).

In this matter, no quiet title claim was ever made by Appellee. In addition, Appellee did not bring suit to "to quiet an *existing* title against an adverse or hostile claim of another" because she had no title, nor was there an "adverse or hostile claim by another." According to this definition, Interveners/Appellants, rather than Appellee, would be the party which would have asserted this claim because they had the existing title and the adverse claim was Appellee's.

It is clear from the Verified Answer and the Amended Answer and Complaint against the Interveners that Appellee made a claim for a marital interest in the property and to invalidate the January 25, 1990 deed. She made no quiet title claim. Therefore,

the claim to invalidate he 1990 deed is subject to the statute of limitations and, therefore, barred by that statute of limitation.

### B. IF APPELLEE DID ASSERT A QUIET TITLE CLAIM, THE CLAIM IS STILL BARRED BY THE STATUTE OF LIMITATIONS.

"Thus, in order to determine whether the statute of limitations applies to a quiet title claim, the court must assess on what basis the party would be entitled to have title quieted. If the party is entitled to have title quieted only if the court first finds in his or her favor on another legal issue, then the same statute of limitations that applies to that legal issue will also apply to the quiet title claim." In re Hoopiiaiana Trust, 144 P.3d 1129, ¶ 27 (Utah 2006).

Even if the Court determines that the a quiet title claim exists, the underlying claim or legal issue is to invalidate the January 25, 1990 deed. That claim is subject to the statute of limitations and, therefore, barred.

In Bangerter v. Petty, 225 p.3d 874, ¶ 11 (Utah 2009), the Court held that "the statute of limitations does not apply to quiet title actions where the claimant is in actual possession of the property in question under a claim of ownership." However, the facts of Bangerter are very different from this case. Bangerter involved a foreclosure action on a property for which the Bangerter had title at one time. In this case, Appellee never had title to the property, nor did she ever assert a claim of ownership until the divorce action was filed 18 years later. She did not pay the taxes, acquire or pay the mortgage, or ever claim to be the titled owner. Appellee was not in continuous possession of the property.

The evidence at trial showed that the parties had numerous residences through the years and that by court order Appellee only gained temporary possession of the trailer on the farm property, not the entire farm property. Petitioner/Appellant continued to farm the property while the divorce action was pending.

Appellee's claim is barred by the statute of limitations. Her claim should be limited to her marital interest in Petitioner/Appellants's share of the farm property. The trial court should not have asserted the quiet title claim on her behalf and then ruled that the statute of limitations did not apply to that claim. The trial court ruling should be reversed and the statute of limitations applied.

The trial court never addressed the statute of limitation issue with respect to the water rights. The trial court treated the water rights the same as the farm property. The quiet title statute of limitations does not apply to the water rights. Any claim for the water rights should be barred by the statute of limitations. Therefore, Appellee should be entitled to a marital share of Petitioner/Appellant's interest in the water rights.

## II. THE TRIAL COURT ERRED IN RULING BY CLEAR AND CONVINCING EVIDENCE THAT THE 1990 QUITCLAIM DEED WAS INVALID.

On January 25, 1990 Petitioner/Appellant executed and recorded a quit claim deed in which he transferred his sole interest in the farm property to himself and Interveners, as joint tenants. "One who asserts the invalidity of a deed must so prove by clear and

convincing evidence." Northcrest v. Walker Bank and Trust Co., 248 P.2d 692, 693 (Utah 1952). Appellee did not present clear and convincing evidence that the 1990 quitclaim was invalid.

UCA 57-1-13 provides that "[a] quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described and all rights, privileges, and appurtenances thereunto belonging, at the date of the conveyance."

There is no dispute that the 1990 quit claim deed was validly executed and recorded. "It is true that such acknowledgment and recordation give rise to a presumption of the genuineness and the due execution and delivery of the deed and is prima facie evidence thereof. This presumption should not be regarded lightly but should be given great weight." Northcrest v. Walker Bank and Trust Co., 248 P.2d 692, 694 (Utah 1952).

The dispute is whether Petitioner/Appellant delivered the deed to Intervenors/Appellants with the present intent to transfer. "A conveyance is valid upon delivery of a deed with present intent to transfer." Winegar v. Froerer Corp., 813 P.2d 104,110 (Utah 1991).

There was considerable evidence taken at trial which tried to ascertain Petitioner/Appellant's intent. As the minute entry states, Petitioner/Appellant transferred the farm property "for the purpose of receiving favorable property tax and inheritance tax treatment." (R. 280). The was considerable testimony which tried to discern what

Petitioner/Appellant meant by that statement or whether the Petitioner/Appellant and Interveners/Appellants acted consistent with ownership. The evidence showed that Intervener/Appellants had been actively involved with the farm over years including residing on the farm, working on the farm, acquiring and paying the mortgage on the farm, and paying the taxes. Appellee presented no evidence to contradict these facts.

Appellee argued that because Petitioner/Appellant retained possession of the property and incidences of ownership that he showed a lack of intent to make a present transfer of the farm property. However, the Court stated in Controlled Receivables, Inc. v. Harman, 413 P.2d 807 (Utah 1966) that

> With respect to the fact that Claude retained possession of the deeds, it is of little or no significance in rebutting the presumption of delivery in this case. A delivery to one cotenant is generally regarded as a delivery to all. This rule is particularly applicable in the instant case, for at the time of the execution of the conveyance Claude's children were all minors. It is only natural that he, as parent and guardian, should be the custodian of the deeds. Claude's payment of the taxes and maintenance expenses and his possession of the property are not inconsistent with the delivery, for here again an important factor is the minority of his children at the time of the transaction.

The Court similarly found in Woolley v. Taylor, 144 P. 1094 (1914), that the fact the father stayed in possession, paid the taxes and insurance, and made improvements was not inconsistent with ownership in his daughter, the grantee, who had no means of her own. "That was but natural for a father to do for his daughter, and is unlike a case of a claimed grant in praesenti to a stranger where the grantor remained in possession, improved the property, and paid the taxes."

In this case, not only was Petitioner/Appellant a parent of the Interveners/Appellants, who were minors, but he was only an owner of the property. As an owner, Petitioner/Appellant likewise would have paid mortgage payment, possessed the property, paid taxes, etc. Petitioner/Appellant's conduct was consistent both with his ownership and his role as parent to the Intervener/Appellants. As the children became adults, the evidence showed that they participated in acquiring and paying mortgages and paying taxes.

Appellee failed to show by clear and convincing evidence that the 1990 quitclaim deed was not delivered. Therefore, the 1990 quitclaim was valid and the trial court ruling should be reversed.

## III. THE TRIAL COURT ERRED IN AWARDING PROPERTY WHICH WAS OWNED BY THIRD PARTIES TO THE PETITIONER/APPELLANT AND RESPONDENT/APPELLEE.

On page 11 of the Second Amended Findings of Fact and Conclusions of Law for Divorce, the trial court awarded water rights of third parties to the Petitioner/Appellant and Respondent/Appellee (R. 305, 390-392). These third parties have filed a motion to intervene and a motion for relief of judgment (R. 319-355). Because these third parties were not a party to the action, the court had no jurisdiction to determine their rights to the property. In Reader v. District Court of the Fourth Judicial District, 98 Utah 1 (1939), the

Utah Supreme Court stated that "the failure of the court to obtain jurisdiction over one of the indispensable parties rendered the judgment as to all of them void."

In a case before the Utah Supreme Court, Jackson Construction Company , Inc. v. Marrs, 100 P.2d 1211 (2004), the defendants sought to have a default judgment set aside because they were never served with process. The court held that the district court lacked jurisdiction to enter the default judgment because the defendants were not served with process.

The order of the trial court in regards to the water rights should be reversed.

## IV. THE TRIAL COURT ERRED BY GRANTING PETITIONER/APPELLANT AN INEQUITABLE SHARE OF THE MARITAL ESTATE.

Although trial courts have considerable discretion in determining property distribution in divorce cases, a clear and prejudicial abuse of discretion exits. Stonehocker v. Stonehocker, 176 P.3d 476 (Utah App.). The trial court ordered that all of the marital property be sold and distributed equally. However, the trial court awarded the GMC pickup to Respondent/Appellee and did not divide the marital debts equally, or close to equally. Petitioner/Appellant was ordered to pay three times as much debt as Respondent/Appellee.

Upon sale of property, all marital debts acquired prior to separation be paid from the proceeds and then the remaining balance be divided equally.

## V. THE TRIAL JUDGE ERRED IN AWARDING ATTORNEY'S FEES AGAINST THE APPELLANTS.

In its minute entry of September 3, 2009, the trial court states that "Respondent is awarded her attorney's fees because of the conduct of the petitioner in attempting to prevent her from receiving a fair share of marital assets" (R. 285). Based upon this finding, one must conclude that the trial court believed that Appellant's case was without merit or asserted in good faith.

Utah Code Ann. § 78B-27-825 provides that "[i]n civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith. . . ."

As previously outlined in this brief, there is more than sufficient evidence in the record to support that the Appellants claims have merit and were asserted in good faith. The statute of limitations claim has merit and was asserted in good faith. In fact, the Bangerter opinion was not issued until after the trial court made its ruling. The claim in regard to the validity of the 1990 deed was meritorious. This issue is fact sensitive and there was ample evidence to support the validity of the 1990 deed.

The finding made by the trial court in support of the judgment of attorney fees was insufficient. The finding was a conclusion without any assertions of fact. The finding does not even state which parties are subject to the order.

The trial courts' findings and order in support the award of attorney fees and the order should be reversed.

## CONCLUSION

For the reasons set forth above, appellants respectfully request that the order be reversed and remanded to the trial court for further hearing.

Respectfully submitted this 19 day of April, 2010.

Scott A. Broadhead
Attorney for Petitioner/Appellant and
Interveners/Appellants

## CERTIFICATE OF SERVICE

This is to certify that on the 19 day of April, 2010, two true and correct copies of the foregoing Brief of Appellees were mailed, postage prepaid, to:

Gary Buhler
P.O. Box 229
Grantsville, UT 84029-0229

Scott A. Broadhead

## ADDENDUM

1. Minute Entry

2. Order and Judgment Concerning Distribution of Assets and Debts

3. Second Amended Findings of Fact and Conclusions of Law for Divorce

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**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR TOOELE COUNTY, STATE OF UTAH**

| | |
|---|---|
| *RODNEY FRANK GRGICH*<br>Petitioner,<br>vs.<br><br>SHARON GRGICH<br>Respondent. | ***ORDER AND JUDGMENT CONCERNING DISTRIBUTION OF ASSETS AND DEBTS***<br><br>Case No. 064300444 DA<br>Commissioner Michelle Tack<br>Judge Stephen L. Henriod |

This matter was originally tried on November 15, 2007 before the Honorable Mark Kouris. Following the entry of the divorce decree, the Court set aside paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Findings and the equivalent paragraphs in the decree because in the original divorce decree, Sharon was awarded part of the real property which had been titled in part in the names of Brenda Kathleen Gowans, Rodney Grgich, Jr., and Brittany K. Grgich, although they were not then parties to the action. This Order is limited to distribution of the farm, the farm equipment, and allocation of the debt associated therewith.

The second trial was conducted over three days on June 19, 2009, July 17, 2009, and July 22, 2009. The petitioner Rodney Grgich, and the intervenors Brenda Kathleen Gowans, Rodney Grgich, Jr., and Brittany K. Grgich were represented by their counsel of record Scott Broadhead. The respondent Sharon Grgich, was represented by her counsel of record Gary Buhler.

The Court having issued its Minute entry of September 3, 2009 and having entered its amended Findings of Fact, does now make, adopt, and find the following:

**ORDER AND JUDGMENT CONCERNING**
**DISTRIBUTION OF ASSETS AND DEBTS**

1. Rodney and Sharon Grgich were married in May, 1967 and divorced by the decree of this Court on April 23, 2008.
2. Rodney inherited a farm in 1989, which is the only remaining significant asset of the marriage. The parties lived on the family farm at various times and Sharon still lives there at this time. This property has significantly increased in value since 1989, but the increased value is completely passive appreciation.
3. The Court has found that the transfer of property title by Rodney to himself and the intervenors in 1990 was not a valid transfer and that the farm became a family asset, belonging to Rodney and Sharon.
4. The Court has found that the farm, including the water and all the farm equipment and other personal property on the farm is marital property, and that it shall all be sold, with the proceeds divided equally between Rodney and Sharon after paying any debts secured by the property, the costs of the sale, and after reimbursing Brenda Kathleen Gowans for all expenditures she made for real property tax obligations and for mortgage payments in order to preserve the property, together with interest on her expenditures from the date of expenditure to the present at 6% per annum.
5. Sharon shall have the immediate and sole control of the property (See Addendum) with the authority and responsibility to list it for sale immediately, and is hereby

authorized to take such actions as are necessary in order to liquidate the property as soon as possible at fair market value.

6. Rodney is ordered to cooperate with Sharon and any income or expenses, or taxable deductions arising from the property from the date of this Judgment shall be divided equally between the parties.

7. Pursuant to an earlier Order of the Court, the 1984 GMC truck is awarded to Sharon.

8. The Protective Order between the parties under case #064300378 is hereby dissolved.

9. Rodney was previously ordered by this Court to share equally farm income during the pendency of the action, but he has failed to do so. Rodney is ordered to account for all farm income and pay to Sharon immediately the difference between any payments he has made to Sharon and one-half of all net proceeds.

10. Sharon is authorized to borrow up to $100,000.00 against the property in order to be able to provide reasonable living accommodations for herself in light of the bestial living conditions imposed on her by Rodney for at least the past nine years while he has been supported by Brenda Kathleen Gowans.

11. This farm currently has a mortgage against it in the names of Rodney Grgich and his son Rodney Grgich Jr. Sharon may use part of the loan to retire this debt or make the required monthly payments to insure the farm is not lost to foreclosure prior to its sale.

12. Each of the parties shall assume, pay and discharge any individual debts and obligations which he or she may have incurred after August, 2006, and indemnify and hold the other party harmless from all loss, liability or expense which he or she may incur therefrom.

13. Pursuant to Utah Code Annotated, Section 15-4-6.5(3)(b), both parties are authorized to provide notice to each of the parties' creditors of the allocation of debts between the parties following the entry of the Decree of Divorce.

14. Rodney shall pay the following debts, and hold Sharon harmless from all loss, liability or expense which she may incur in the event he fails so to do:

| Debtor | Incurred for | Estimated Amount |
|---|---|---|
| Rodney's Medical Bills | Medical | 12,559.00 |
| Omium Worldwide | | 109.00 |
| ERS Solutions | | 89.00 |
| Amer. Debt Collection | | 914.00 |
| Tooele County | | 378.00 |

15. Sharon shall pay the following debts, and hold harmless Rodney from all loss, liability or expense which he may incur in the event she fails so to do:

| Debtor | Incurred for | Estimated Amount |
|---|---|---|
| Express Recovery | | 2,490.00 |
| Francis Flores | | 1,900.00 |

16. Rodney shall equally share with Sharon the retirement acquired during the marriage that he receives each month from the federal government as provided in *Woodward.* This division should be accomplished by means of a Qualified Domestic Relations Order. The parties shall share equally the cost of preparing the QDRO.

17. In the event either party fails to perform his or her obligations under the Decree of Divorce herein, the party who fails to perform his or her obligations thereunder should be required to pay all costs and attorney's fees of the other party incurred in enforcing the terms of the Decree of Divorce.

18. Rodney is ordered to pay the respondent one-half of the amount withdrawn from his retirement during the pendency of these proceedings. (He cashed in 401(k) and life insurance of $6,844.00 * ½ = $3,422.00) Judgment in the amount of $3,422.00 is hereby entered in Sharon's favor for retirement.

19. Sharon is awarded her attorney's fees in the minimum amount of $19,952.00 because of Rodney's conduct in attempting to prevent her from receiving a fair share of marital assets. See attached Affidavit of Fees. Sharon is hereby awarded a $19,952.00 judgment for attorney's fees.

20. The total $23,374.00 judgment shall be augmented by ongoing interest at the statutory rate 2.4% annual interest until paid in full and by any and all costs of collection to include Sharon's reasonable attorney's fees at the rate normally and reasonably charged by her attorney at the time of the collection expenses.

21. Because these obligations are family support obligations, they may not be discharged in any bankruptcy action unless so ordered by the appropriate bankruptcy court.

DATED this _____, 2009.

BY THE COURT:

_____
Stephen L. Henriod
Third District Court Judge

**ADDENDUM**

The marital real property is described as is described as:

Beginning 10 chains East of the Northwest corner of the Northeast quarter of Section 32, T2S, R4W; East 23.30 chains, South 12.14 chains, West 23.30 chains North, 12.14 chains to the beginning; containing 26.83 acres more or less; after excluding the one (1) acre deeded to Marlin Grgich, described as follows: Beginning on the West line of Cochrane Lane at a point North 89°37'02" East 2156.29 feet along Section line and South 0°20'48" East 801.23 feet from the North 1/4 corner Section 32, Township 2 South; Range 4 West, SLB&M; thence running North 89°37'02" West 541.8 feet; thence North 0°20'48" West 72.0 feet; thence North 89°37'02" East 344.8 feet; thence South 0°20'48" East 41.3 feet; thence North 89°37'02" East 72.0 feet; thence North 0°20'48" West 101.8 feet; thence North 89°37'02" East 125.0 feet to Cochrane Lane; thence South 0°20'48" East 132.5 feet to beginning, Erda, Tooele County, State of Utah. Containing 1.0 acres, with all improvements and appurtenances. aka 4305 North Cochran Lane, Erda, Tooele County, State of Utah. aka Tax ID # 5-48-8:

to include the following appurtenant underground water rights associated with the farm land expressed in ACRE FT

| | | | |
|---|---|---|---|
| WR 15-1091 | 2.405 | WR 15-4816 | 52.480 |
| WR 15-1124 | 1.955 | WR 15-4817 | 6.115 |
| WR 15-1394 | 2.520 | WR 15-4818 | 6.115 |
| WR 15-1395 | 2.814 | WR 15-4819 | 7.980 |
| WR 15-1400 | 6.600 | WR 15-4820 | 8.274 |
| WR 15-1267 | 16.520 | WR 15-4821 | 21.000 |

NOTE: Access to the existing wells as have historically been used to irrigate the ground and to provide domestic water to the home site shall not be interrupted or interfered with in any way. Cost for pump operation and repair shall be shared in proportion to the water received by all those who use the respective pumps.

The farm equipment with estimated fair market values indicated includes:

| | | | |
|---|---|---|---|
| BF M. M. Tractor | 100.00 | JD 2 row cultivator | 150.00 |
| 995 Case Tractor | 5,995.00 | 13–6 wheel disk | 1,100.00 |
| Case 1210 Tractor | 3,500.00 | Potato Planter | 250.00 |
| 1952 IH Farmal Tractor | 850.00 | Seed Potato Cutter | 20.00 |
| 1956 JD Tractor | 850.00 | 2 - 466 JD Bailers | 1,500.00 |
| 1070 Case tractor | 1,500.00 | Flair Beater | 25.00 |
| 1982 Volkswagen Pick up | 200.00 | Swedish Harrow | 500.00 |
| 1991 Geo Metro | 325.00 | Bale Elevator | 50.00 |
| 1961 Chevy Dump Truck | 750.00 | Ford Field Cultivator | 250.00 |
| 1973 Ford F250 | 100.00 | 20" grain Elevator | 350.00 |
| 1976 GMC | 1,700.00 | 1976 1033 IH Stack Wagon | 750.00 |
| 1966 Chevy K10 Pickup | 100.00 | Wheel Type Sprinkler | 1,200.00 |
| E-10 Case Mower | 350.00 | 74 70"Howard Rotivator | 500.00 |
| JD 640 Rake | 175.00 | Home Built Trencher | 75.00 |
| 1994 Befco 12 wheel Rake | 2,000.00 | Gopher poison Machine | 150.00 |
| 1976 Massie Ferg Combine | 4,500.00 | Moline 20 hole grain Drill | 250.00 |
| 1987 12'Mower Conditioner | 1,500.00 | MF # 57 3 bottom plow | 350.00 |
| JD 2 Row Planter | 100.00 | Home Built 3 row Cultivator | 150.00 |
| Massie Ferg 2 way plow | 350.00 | 1988 2 sets Harrows | 660.00 |
| Rolling Mill | 350.00 | 1988 200 gal. Cent Sprayer | 350.00 |
| Manure Spreader | 150.00 | | |

NOTICE OF ORDER

Dated September 21, 2009:

Scott Broadhead
PO Box 87
Tooele UT 84074

Pursuant to Rule 7 the UTAH RULES OF CIVIL PROCEDURE, you are hereby notified that respondent's counsel has forwarded the original hereof to the Court for signature, and you have five (5) days from the date this notice is served upon you to file any written objections to the form of the foregoing order with the Court and mail a copy to respondent's counsel. If no objections are filed within that time, the original hereof will be signed and filed.

Gary Buhler

GARY BUHLER (7039)
ATTORNEY FOR RESPONDENT
PO BOX 229
GRANTSVILLE, UT 84029-0229
TELEPHONE: (435) 884-0354

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR TOOELE COUNTY, STATE OF UTAH**

| | |
|---|---|
| RODNEY FRANK GRGICH<br>Petitioner,<br>vs.<br><br>SHARON GRGICH<br>Respondent. | **Second Amended FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR DIVORCE**<br>Case No. 064300444 DA<br>Commissioner Michelle Tack<br>Judge Stephen L. Henriod |

This matter was originally tried on November 15, 2007 before the Honorable Mark Kouris. The petitioner, Rodney Grgich, appeared in person and was represented by his counsel of record, Scott Broadhead. The respondent, Sharon Grgich, appeared in person and was represented by her counsel of record, Gary Buhler.

Following that trial, the Court issued its Amended Memorandum Decision on January 10, 2008, and amended that ruling via a minute entry dated March 31, 2008 wherein the Court granted the Petitioner's Motion to allow the intervenors Brenda Kathleen Gowans, Rodney Grgich, Jr., and Brittany K. Grgich to intervene. In support of that ruling, the Court set aside paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Findings and the equivalent paragraphs in the decree because in the original divorce, the real property which had been titled in part in the names of the intervenors was awarded and they were not then parties to the action.

With the exception of the foregoing numbered paragraphs, the Court adopts the Memorandum Decision of Judge Kouris, dated January 7, 2008, with respect to all of its findings and legal conclusions. This ruling is limited to distribution of the farm, the farm equipment, and allocation of the debt associated therewith.

The second trial was conducted over three days on June 19, 2009, July 17, 2009, and July 22, 2009. The petitioner, Rodney Grgich, and the intervenors Brenda Kathleen Gowans, Rodney Grgich, Jr., and Brittany K. Grgich appeared in person and were represented by their counsel of record, Scott Broadhead. The respondent, Sharon Grgich, appeared in person and was represented by her counsel of record, Gary Buhler.

The parties having been duly sworn and examined under oath, documentary evidence having been marked and received by the Court and the having heard argument and having considered all the evidence and having issued its Minute entry of September 3, 2009, does now make, adopt and find the following:

**FINDINGS OF FACT**

1. Rodney has been an actual and bona fide resident of Tooele County, Utah for at least three months immediately prior to the filing of this divorce action.
2. Rodney and the respondent, Sharon Grgich were married in May, 1967, in Elko Nevada, are husband and wife and have maintained their marital domicile in Tooele County, Utah, for the past several years.

3. Rodney and Sharon have experienced a complete breakdown of the marital relationship, cannot communicate with each other and have irreconcilable differences in their lifestyles and marital relationship.
4. This is a very long marriage which produced five children that have matured. During the course of the marriage both Rodney and Sharon have consistently been financially irresponsible and the farm is the only asset of the marriage remaining.
5. Rodney inherited the farm (26.8 acres, plus water - See attached descriptions ) in 1989. He received title to the property from his father's estate on January 24, 1990 and immediately, with notice to no one, quit-claimed the property to himself and his son Rodney Grgich Jr., and his daughters Brenda Gowans (Grgich) and Brittany Grgich; (the intervenors). Rodney testified both in 2007 and in 2009 that he did it for the purpose of receiving favorable property tax and inheritance tax treatment, and those were the only motivations for the transfer.
6. The parties lived on the family farm from the time of their marriage until 1977, after which they lived in Tooele County and various locations, losing residences through eviction and foreclosure until they moved back to the family farm in 1993.
7. Sharon lived on the property, and contributed to the maintenance and productive use of the property and still lives on the family farm, whereas Rodney moved out in the fall of 2006. This property has significantly increased in value since 1989, but the increased value is completely passive appreciation.

8. Sharon worked on the farm, both during the years she lived on it and the years that she did not. The farm became a family asset, belonging to Rodney and Sharon. They filed joint tax returns, including farm income and deductions.
9. The Court's ruling after the 2007 trial awarded half the family farm and attendant property to Rodney and half to Sharon. This Court set aside that award because, as explained above, the intervenors who were joint tenants with respect to the 26.8 acres and the water, were not parties to that action. At the retrial, Sharon 's position was that the transfer of property by Rodney to the intervenors in 1990 was not a valid transfer. One who asserts the invalidity of a deed must prove the invalidity by clear and convincing evidence. The deed in question was signed and recorded, and therefore was presumed to be delivered. The quit-claim deed was not secret, and Sharon learned of it sometime after the transfer and many years before the start of the divorce action. One of the intervenors has made significant payments toward real property tax, and has also made many mortgage payments on the property. The intervenors claim to have worked on the property and Brenda Kathleen Gowans and Brittany Kay Grgich both testified that while they had requested several times that Rodney take the title to the property back from them, that he had refused.
10. There was evidence at trial, both in 2007 and 2009 that Rodney set up a trust which he testified was to provide for him and Sharon in their later years. He apparently conveyed his real property interest into the trust, but the conveyance document was

never recorded. Despite the trial testimony, no credible evidence of the existence of a legally valid trust was presented at either trial, and the use of the trust as testified to by Rodney was not consistent with his stated purpose for the trust. Instead, he continued to control the property in its entirety during the years the supposed trust was in existence, although he did accept payments on real property tax and mortgages from the intervenor, Brenda Kathleen Gowans, which helped to preserve the property from tax sale or foreclosure. A few days before the second day of trial, apparently the trust was dissolved, or at least its nonexistence was recognized by Rodney and the intervenors.

11. Since 1990, the property has been mortgaged and used as collateral for loans a number of times, all of which loans were to benefit Rodney and Sharon, and the property.

12. Rodney was the only person who had control of this real property since 1989. He has borrowed against the property without the children's knowledge or consent, and sometimes with one or two children's knowledge and consent, and over the objections of another child. Rodney has always done what he wanted with the property. Only Rodney has taken profits from the property, the children have never shared in any profits or any deductions.

13. Had Rodney truly intended a present conveyance in 1990, his use of the property without the participation of the other joint tenants would have violated Utah law.

When Rodney deeded the property to three of his children as joint tenants with himself, he did not intend to convey a present interest in the property. The deed was for some other purpose, possibly tax or inheritance treatment, but in his testimony, Mr. Grgich made it clear he was following the advice of a relative and did not understand what the legal effect of the transfer would be with respect to property taxes or inheritance taxes and in fact it appeared that what understanding he does have is directly contrary to the actual effect that said transfer would have had.

14. Rodney's control of the property included use of the land, borrowing against the land and keeping all of the proceeds, attempts to sell the land, and during this conduct from 1989 to the present he led his spouse, the respondent, to believe that the 1990 quit-claim deed did not constitute a transfer at that time and by his conduct he is therefore estopped from claiming that the 1990 quit-claim was a valid transfer, or that either the legal principle of laches or the statute of limitations applies to Sharon's claim for an interest in the property. See *Nolan v. Hoopiiana* 2006 UT 53, 144 P3d 1129.

15. Rodney's testimony in the 2009 trial was intentionally evasive and dishonest, and not credible in any way. Sharon's testimony was credible, and the intervenors' testimony was not helpful with respect to the resolution of the issue before the Court.

16. The Court finds the farm, including the water and all the farm equipment and other personal property on the farm is marital property, and that it should all be sold, with the proceeds divided equally between Rodney and Sharon after paying any debts secured

by the property and reimbursing Brenda Kathleen Gowans for all expenditures she made to preserve the property, together with interest on her expenditures from the date of expenditure to the present at 6% per annum.

17. Sharon shall have the immediate and sole control of the property (See Addemdum) with the authority and responsibility to list it for sale immediately, and is hereby authorized to take such actions as are necessary in order to liquidate the property as soon as possible at fair market value.

18. Rodney is ordered to cooperate with Sharon and any income or expenses, or taxable deductions arising from the property from the date of this Judgment shall be divided equally between the parties.

19. Pursuant to an earlier Order of the Court, the 1984 GMC truck has been returned by Rodney to Sharon and it is awarded to her.

20. The Protective Order between the parties under case #064300378 is dissolved.

21. Rodney was previously ordered by this Court to share equally farm income during the pendency of the action, but he has failed to do so. Rodney is ordered to account for and pay the difference between any payments made and one-half of all net proceeds to Sharon immediately.

22. Sharon is authorized to borrow up to $100,000.00 against the property in order to be able to provide reasonable living accommodations for herself in light of the bestial

living conditions imposed on her by Rodney for at least the past nine years while he has been supported by Brenda Kathleen Gowans.

23. This farm currently has a mortgage against it in the names of Rodney Grgich and his son Rodney Grgich Jr. Sharon may use part of the loan to retire this debt or make the required monthly payments to insure the farm is not lost to foreclosure prior to its sale.

24. Each of the parties should assume, pay and discharge any individual debts and obligations which he or she may have incurred after August, 2006, and indemnify and hold the other party harmless from all loss, liability or expense which he or she may incur therefrom.

25. Pursuant to Utah Code Annotated, Section 15-4-6.5(3)(b), both parties are authorized to provide notice to each of the parties' creditors of the allocation of debts between the parties following the entry of the Decree of Divorce.

26. Rodney should pay the following debts, and hold Sharon harmless from all loss, liability or expense which she may incur in the event he fails so to do:

| Debtor | Incurred for | Estimated Amount |
|---|---|---|
| Rodney's Medical Bills | Medical | 12,559.00 |
| Omium Worldwide | | 109.00 |
| ERS Solutions | | 89.00 |
| Amer. Debt Collection | | 914.00 |
| Tooele County | | 378.00 |

27. Sharon should pay the following debts, and hold harmless Rodney from all loss, liability or expense which he may incur in the event she fails so to do:

| Debtor | Incurred for | Estimated Amount |
|---|---|---|
| Express Recovery | | 2,490.00 |
| Francis Flores | | 1,900.00 |

28. Rodney should equally share with Sharon the retirement acquired during the marriage that he receives each month from the federal government as provided in *Woodward.* This division should be accomplished by means of a Qualified Domestic Relations Order. The parties should share equally the cost of preparing the QDRO.

29. Rodney is ordered to pay the respondent one-half of the amount withdrawn from his retirement during the pendency of these proceedings. (He cashed in 401(k) and life insurance $6,844.00 * ½ = $3,422.00) Judgment in the amount of $3,422.00 should enter in Sharon's favor for retirement.

30. In the event either party fails to perform his or her obligations under the Decree of Divorce herein, the party who fails to perform his or her obligations thereunder should be required to pay all costs and attorney's fees of the other party incurred in enforcing the terms of the Decree of Divorce.

31. Sharon is awarded her attorney's fees in the minimum amount of $19,952.00 because of Rodney's conduct in attempting to prevent her from receiving a fair share of marital assets. See attached Affidavit of Fees. Sharon is hereby awarded a $19,952.00 judgment for attorney's fees.

32. The total $23,374.00 judgment shall be augmented by ongoing interest at the statutory rate 2.4% annual interest until paid in full and by any and all costs of collection to include Sharon's reasonable attorney's fees at the rate normally and reasonably charged by her attorney at the time of the collection expenses.

33. Because these obligations are family support obligations, they may not be discharged in any bankruptcy action unless so ordered by the appropriate bankruptcy court.

DATED this _____, 2009.

BY THE COURT:

_____
Stephen L. Henriod
Third District Court Judge

**ADDENDUM**

The marital real property is described as is described as:

Beginning 10 chains East of the Northwest corner of the Northeast quarter of Section 32, T2S, R4W; East 23.30 chains, South 12.14 chains, West 23.30 chains North, 12.14 chains to the beginning; containing 26.83 acres more or less; after excluding the one (1) acre deeded to Marlin Grgich, described as follows: Beginning on the West line of Cochrane Lane at a point North 89°37'02" East 2156.29 feet along Section line and South 0°20'48" East 801.23 feet from the North 1/4 corner Section 32, Township 2 South; Range 4 West, SLB&M; thence running North 89°37'02" West 541.8 feet; thence North 0°20'48" West 72.0 feet; thence North 89°37'02" East 344.8 feet; thence South 0°20'48" East 41.3 feet; thence North 89°37'02" East 72.0 feet; thence North 0°20'48" West 101.8 feet; thence North 89°37'02" East 125.0 feet to Cochrane Lane; thence South 0°20'48" East 132.5 feet to beginning, Erda, Tooele County, State of Utah. Containing 1.0 acres, with all improvements and appurtenances. aka 4305 North Cochran Lane, Erda, Tooele County, State of Utah. aka Tax ID # 5-48-8:

to include the following appurtenant underground water rights associated with the farm land expressed in ACRE FT

| | | | |
|---|---|---|---|
| WR 15-1091 | 2.405 | WR 15-4816 | 52.480 |
| WR 15-1124 | 1.955 | WR 15-4817 | 6.115 |
| WR 15-1394 | 2.520 | WR 15-4818 | 6.115 |
| WR 15-1395 | 2.814 | WR 15-4819 | 7.980 |
| WR 15-1400 | 6.600 | WR 15-4820 | 8.274 |
| WR 15-1267 | 16.520 | WR 15-4821 | 21.000 |

NOTE: Access to the existing wells as have historically been used to irrigate the ground and to provide domestic water to the home site shall not be interrupted or interfered with in any way. Cost for pump operation and repair shall be shared in proportion to the water received by all those who use the respective pumps.

The farm equipment with estimated fair market values indicated includes:

| | | | |
|---|---|---|---|
| BF M. M. Tractor | 100.00 | JD 2 row cultivator | 150.00 |
| 995 Case Tractor | 5,995.00 | 13–6 wheel disk | 1,100.00 |
| Case 1210 Tractor | 3,500.00 | Potato Planter | 250.00 |
| 1952 IH Farmal Tractor | 850.00 | Seed Potato Cutter | 20.00 |
| 1956 JD Tractor | 850.00 | 2 - 466 JD Bailers | 1,500.00 |
| 1070 Case tractor | 1,500.00 | Flair Beater | 25.00 |
| 1982 Volkswagen Pick up | 200.00 | Swedish Harrow | 500.00 |
| 1991 Geo Metro | 325.00 | Bale Elevator | 50.00 |
| 1961 Chevy Dump Truck | 750.00 | Ford Field Cultivator | 250.00 |
| 1973 Ford F250 | 100.00 | 20" grain Elevator | 350.00 |
| 1976 GMC | 1,700.00 | 1976 1033 IH Stack Wagon | 750.00 |
| 1966 Chevy K10 Pickup | 100.00 | Wheel Type Sprinkler | 1,200.00 |
| E-10 Case Mower | 350.00 | 74 70"Howard Rotivator | 500.00 |
| JD 640 Rake | 175.00 | Home Built Trencher | 75.00 |
| 1994 Befco 12 wheel Rake | 2,000.00 | Gopher poison Machine | 150.00 |
| 1976 Massie Ferg Combine | 4,500.00 | Moline 20 hole grain Drill | 250.00 |
| 1987 12'Mower Conditioner | 1,500.00 | MF # 57 3 bottom plow | 350.00 |
| JD 2 Row Planter | 100.00 | Home Built 3 row Cultivator | 150.00 |
| Massie Ferg 2 way plow | 350.00 | 1988 2 sets Harrows | 660.00 |
| Rolling Mill | 350.00 | 1988 200 gal. Cent Sprayer | 350.00 |
| Manure Spreader | 150.00 | | |

CERTIFICATE OF MAILING

I hereby certify that on September 24, 2009 a true and correct copy of the foregoing document was served upon the petitioner by US Mail addressed to:

Scott Broadhead
PO Box 87
Tooele UT 84074

Gary Buhler

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR TOOELE COUNTY, STATE OF UTAH

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| | | |
|---|---|---|
| RODNEY FRANK GRGICH, | : | MINUTE ENTRY |
| Petitioner, | : | CASE NO. 064300444 |
| vs. | : | |
| SHARON GRGICH, | : | |
| Respondent. | : | |

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This matter was originally tried on November 15, 2007. On October 20, 2008, the Court set aside paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 from the Findings and Decree entered after the November 2007 trial, and granted the Motion to allow Brenda Kathleen Gowans, Rodney Grgich, Jr., and Brittany K. Grgich to intervene. This Order was entered, because in the original divorce real property was awarded which had been titled in part in the names of the intervenors and they were not then parties to the action.

With the exception of the foregoing, the Court adopts the Memorandum Decision of Judge Kouris, dated January 7, 2008, with respect to all of its findings and legal conclusions, excepting only the foregoing.

The following history restates in part some of the issues stated in the original Memorandum Decision simply to reflect the evidence presented to this Court June 19 and July 17, 2009.

Rodney and Sharon Grgich were married in 1967 in Elko, Nevada. They lived on the family farm, which is the subject of this second trial, from the time of their marriage until 1977, after which they lived in Tooele County and various locations, losing residences through eviction and foreclosure until they moved back to the family farm in 1993. Respondent still lives on the family farm, petitioner moved out in the fall of 2006.

Petitioner inherited the farm (26.8 acres, plus water) in 1989, and immediately, with notice to no one, quit-claimed the property to himself and the intervenors. He testified both in 2007 and in 2009 that he did it for the purpose of receiving favorable property tax and inheritance tax treatment, and those were the only motivations for the transfer.

Respondent worked on the farm, both during the years she lived on it and the years that she didn't. The farm became a family asset, belonging to petitioner and respondent. They filed joint tax returns, including farm income and deductions.

This ruling is limited to distribution of the farm, the farm equipment, and allocation of the debt associated therewith. The Court's ruling after the 2007 trial awarded half the family farm and attendant property to petitioner and half to respondent. This Court set aside that award because, as explained above, the intervenors who were joint tenants with respect to the 26.8 acres and the water, were not parties to that action. At the retrial, respondent's position was that the transfer of property by the petitioner to the intervenors in 1989 was not a valid

transfer. One who asserts the invalidity of a deed must prove the invalidity by clear and convincing evidence. The deed in question was signed and recorded, and therefore was presumed to be delivered. The quit-claim deed was not secret, and respondent learned of it sometime after the transfer and many years before the start of the divorce action. One of the intervenors has made significant payments toward real property tax, and has also made many mortgage payments on the property. The intervenors claim to have worked on the property and while Brenda Kathleen Gowans and Brittany Kay Grgich both testified that they had requested several times that the petitioner take the property back from them, that he had refused.

Since 1989 the property has been mortgaged and used as collateral for loans a number of times, all of which loans were to benefit petitioner and respondent, and the property.

The only person who has control of this real property since 1989 is the petitioner. He has borrowed against the property without the children's knowledge or consent, and sometimes with one or two children's knowledge and consent, and over the objections of another child. He has always done what he wanted with the property. Only petitioner has taken profits from the property, the children have never shared in any profits or any deductions. Had petitioner intended present conveyance in 1989, his use of the property without the participation of the other joint tenants would have violated Utah law.

When petitioner deeded the property to three of his children as joint tenants with himself, he did not intend to convey a present interest in the property. The deed was for some other purpose, possibly tax or inheritance treatment, but in his testimony, Mr. Grgich made it clear he was following the advice of a relative and did not understand what the legal effect of the transfer would be with respect to property taxes or inheritance taxes, and in fact it appeared that what understanding he does have is directly contrary to the actual effect that said transfer would have had. His control of the property included use of the land, borrowing against the land, attempts to sell the land, and keeping all of the proceeds, and during this conduct from 1989 to the present he led his spouse, the respondent, to believe that the 1989 quit-claim deed did not constitute a transfer at that time and by his conduct he is therefore estopped from claiming that the 1989 quit-claim was a valid transfer, or that either the legal principle of laches or the statute of limitations applies to her claim for an interest in the property. See also Nolan v. Hoopiiana 2006 UT 53, 144 P3d 1129.

Respondent lived on the property, and contributed to the maintenance and productive use of the property.

This property has significantly increased in value since 1989, but the increased value is completely passive appreciation.

This is a very long marriage, which produced several children. During the course of the marriage both respondent and petitioner have

consistently been financially irresponsible and the farm is the only remaining asset of the marriage.

There was evidence, both in 2007 at trial and 2009 at trial, that petitioner set up a trust which he testified was to provide for him and the respondent in their later years. He apparently conveyed his real property interest into the trust.

Despite the testimony, no credible evidence of the existence of a legally valid trust was presented at either trial, and the use of the trust as testified to by the petitioner was not consistent with his stated purpose for the trust. Instead, he continued to control the property in its entirety during the years the supposed trust was in existence, although he did accept payments on real property tax and mortgages from the intervenor, Brenda Kathleen Gowans, which helped to preserve the property from tax sale or foreclosure. A few days before the second day of trial, apparently the trust was dissolved, or at least its nonexistence was recognized by petitioner and the intervenors.

The petitioner's testimony in the 2009 trial was intentionally evasive and dishonest, and not credible in any way. Respondent's testimony was credible, and the intervenors' testimony was not helpful with respect to the resolution of the issue before the Court.

The Court finds the farm, including the water and all the farm equipment and other personal property on the farm is marital property, and that it should be sold, with the proceeds divided equally between

petitioner and respondent after paying any debts secured by the property and reimbursing Brenda Kathleen Gowans for all expenditures she made to preserve the property, together with interest on her expenditures from the date of expenditure to the present at 6% per annum. Respondent shall have control of the property and responsibility to list it for sale immediately, and take such actions as are necessary in order to liquidate the property as soon as possible. Petitioner is ordered to cooperate with her and any income or expenses, or taxable deductions arising from the property from the date of this Judgment shall be divided equally between the parties.

Pursuant to an earlier Order of the Court, the GMC truck has been returned by petitioner to respondent, and it is awarded to her. The Protective Order between the parties is dissolved.

Petitioner was ordered by this Court to share equally farm income during the pendency of the action, but he has failed to do so. He is ordered to account for and pay the difference between any payments made and one-half of all net proceeds to the respondent immediately. He is ordered to pay the respondent one-half of the amount withdrawn from his retirement during the pendency of these proceedings. Respondent is authorized to borrow up to $100,000 against the property in order to be able to provide reasonable living accommodations for herself in light of the bestial living conditions imposed on her by the petitioner for at least the past nine years while petitioner has been supported by Brenda

Kathleen Gowans. Petitioner's federal retirement is to be divided equally between the parties by QDRO. Respondent is awarded her attorney's fees because of the conduct of the petitioner in attempting to prevent her from receiving a fair share of marital assets.

Counsel for respondent will prepare detailed Findings of Fact, Conclusions of Law, and a Judgment consistent with this Minute Entry.

Dated this 3 day of September, 2009.

STEPHEN L. HENRIOD
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 3 day of ~~August~~ September, 2009:

Scott A. Broadhead
Attorney for Petitioner
74 South 100 East, Suite 26
Tooele, Utah 84074

Gary A. Buhler
Attorney for Respondent
P.O. Box 229
Grantsville, Utah 84029

Nancy Watkins

2009 OCT 30 PM 1:03

FILED BY _____

Scott A. Broadhead, #6501
P.O. Box 1141
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Telephone: (435) 843-3121
Attorney for Petitioner/Appellant and Interveners/Appellants

IN THE THIRD JUDICIAL DISTRICT
IN AND FOR TOOELE COUNTY, STATE OF UTAH

| | |
|---|---|
| RANDY FRANK GRGICH,<br>Petitioner/Appellant, | **NOTICE OF APPEAL** |
| v. | Civil No. 064300444 |
| SHARON GRGICH,<br>Respondent/Appellee, | Judge Stephen L. Henriod<br>Commissioner Michelle Tack |
| BRENDA KATHLEEN GOWANS, RODNEY GRGICH JR., AND BRITTNEY KAYE GRGICH,<br>Interveners/Appellants. | |

Notice is hereby given that Petitioner and Appellant, Rodney Frank Grgich, and Interveners and Appellants, Brenda Kathleen Gowans, Rodney Grgich Jr., and Brittney Kaye Grgich, by and through their attorney Scott A. Broadhead, appeal to the Court of Appeals the final decree and judgment entered in this matter on October 6, 2009. This appeal is taken from the entire judgment.

DATED this 30 day of October, 2009.

Scott A. Broadhead
Attorney for Petitioner/Appellant and
Interveners/Appellants

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed by U.S. mail, postage prepaid, on this 30 day of October, 2009, to:

Gary Buhler
P.O. Box 229
Grantsville, UT 84029-0229